

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,**

**Case No. - OA 843 OF 2023**

**LAKSHMAN DAS - Vs - THE STATE OF WEST BENGAL & OTHERS**

Serial No. and  
Date of order

For the Applicant : Mrs.Sonali Mitra  
Advocate

03

13.12.2024

For the State Respondents : Mr.Goutam Pathak Banejee  
Mr.Soumendra Narayan Ray  
Advocates

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The applicant has filed this application praying for setting aside the impugned Memo. 292 dated 28.07.2023 passed by the respondent authority. By this impugned memo, the application for compassionate employment was regretted mainly on the ground that the proforma application was submitted after a delay of more than two years from the date of death of the deceased employee. The deceased employee, the father of the applicant had died on 31.07.2019. Although a plain paper application was furnished by the applicant which appears to have been received by the office of the Assistant Engineer on 24.11.2019, but the proforma application was submitted only on 04.04.2022 after a delay of two years and 9 months from the date of death of the deceased employee.

Mrs. Mitra, learned counsel for the applicant has submitted that the prevailing Covid situation during 2020-2021 was the main reason why the applicant could not submit the proforma application on time.

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Mr. Banerjee, learned counsel for the State respondents presents a copy of Memo. 395 dated 03.11.2022, issued by the Joint Secretary, addressed to the Superintending Engineer, Eastern Circle and submits that the very fact of the decision taken in this letter was not mentioned by the applicant in the application. Let the copy be kept on record. This Memo. had regretted the application for compassionate employment due to delayed submission of the proforma application. Further, this rejection order dated 03.11.2022 was not assailed by the applicant before this Tribunal. The applicant has approached this Tribunal, challenging the Memo dated 28.07.2023 which was the response against the prayer for reconsideration of the decision taken by the respondent authority in its Memo dated 03.11.2022.

Mrs. Mitra has responded by stating that the first impugned order dated 03.11.2022 was never communicated to the applicant as a result the applicant was unaware that his application was considered and rejected by the Memo. 395 dated 03.11.2022. However, Mr. Banerjee does not agree and draws attention to Sl. No. 3 bearing the name of Lakshman Das, the applicant who was also endorsed a copy of the Memo dated 03.11.2022.

My attention has been drawn to clause 10 (bb) of Notification No.26-Emp dated 1<sup>st</sup> March, 2016, which gives clear responsibility to the office of the respondent in guiding applicants applying for appointment on compassionate ground. The relevant part is as under:-

*“The concerned authority in the department/office should meet the members of the family of the deceased Govt. Servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the*

*very first stage and should be advised in person about the requirement and formalities to be completed by him. A record of such meeting should be kept with the office of the controlling authority and appointing authority”.*

Though the notification as cited above expresses sympathy for the legal heirs of the deceased employee, but in this case, such noble words were not translated into action. The applicant was left at the mercy and sweet will of the respondents and it was only much later the applicant was favoured with the copy of the prescribed proforma. Given this background, can we blame the applicant and reject his application on the ground that he submitted his proforma application after delay of more than two years? In a similar case the Hon’ble Supreme Court in (2012) 7 SCC 248 in the matter of “Shreejith L. Vrs. Deputy Director (Education) Kerala and Others” observed a very important point in a similar situation. The relevant part of the judgement is as under:

*“23. Mr. Rajan, learned Senior Counsel, argued that the first application submitted by Respondent 4 for compassionate appointment on 2-5-1990 was no doubt within the time prescribed but the same was not in proper format. It was, argued the learned counsel, essential that the application should be not only within the time stipulated for the purpose but also in the prescribed format. Inasmuch as that was not so in the instant case the application must be deemed to be non est.*

*24. We regret our inability to accept that submission. The manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognised that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however,*

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*granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the payer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.”*

Having heard the submissions of the learned counsels and considering the facts and circumstances of the matter, the Tribunal does not hesitate in considering the impugned order as non est in the eyes of law and not tenable. Such impugned order rejecting on the ground of delayed submission of proforma application, ignoring the fact that the

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plain paper application was submitted by the applicant well within the time, is but a mockery of justice. Therefore, the impugned Memo. 292 dated 28.07.2023 and Memo. 395 dated 03.11.2022 being quashable, is quashed and set aside. In the peculiar facts and circumstances of this case, the respondent No.1, the Secretary, Department Public Works Department is directed to consider the application of the applicant and give him appropriate appointment within a reasonable time, preferably within six months from the date of communication of this order, if the applicant is otherwise eligible and has fulfilled all other eligibility criterias.

The application is disposed of.

**(SAYEED AHMED BABA)**  
**OFFICIATING CHAIRPERSON AND MEMBER (A)**

BLR